

PATENT

Attorney Docket No. VACCINE-07971

REMARKS

Applicants submit this Preliminary Amendment to provide as a separate part of the disclosure, a "Sequence Listing" pursuant to 37 C.F.R. §§ 1.821-1.825. In addition, Applicants submit herewith the Sequence Listing in paper copy and on floppy disk in computer readable form.

Applicants note that SEQ ID NO:69 in the enclosed Sequence Listing is the amino acid sequence of GenBank Accession No. X65453 for WhcAg-CD40L. Support for this is found in the Specification's disclosure that "The amino acid sequence of the WHcAg-CD40L is set forth herein as SEQ ID NO:69" and the Specification's reference to WHcAg "CD40L (GenBank Accession No. X65453)". The inclusion of the amino acid sequence of the WHcAg-CD40L from GenBank Accession No. X65453 as SEQ ID NO:69 does not constitute new matter because recent Federal Circuit law states a biological sequence may be added to the specification after filing if the sequence is deposited; the Court in *Enzo Biochem v. Gen-Probe (II)*, 296 F.3d 1316 (Fed. Cir. 2002) reasoned that a "person of skill in the art, reading the accession numbers in the patent specification, can obtain the claimed sequences from the ... depository."

Applicants respectfully request entry of this Preliminary Amendment prior to examination of the present application.

Dated: April 1, 2004MahattamdanMaha A. Hamdan
Registration No. 43,655MEDLEN & CARROLL, LLP
101 Howard Street, Suite 350
San Francisco, California 94105
415.904.6500